

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

<b>MARCIA PESTANO,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 7:22-cv-898-ACA-SGC</b>
	)	
<b>WARDEN NEELY,</b>	)	
	)	
<b>Respondent.</b>	)	

**MEMORANDUM OPINION**

On October 18, 2023, the magistrate judge entered a report recommending this court grant the motion to dismiss filed by Petitioner Marcia Pestano and deny as moot the motion to dismiss filed by Respondent Warden Neely. (Doc. 21). The parties were advised of their right to file written objections within fourteen days, and the court has not received any objections.<sup>1</sup>

After careful consideration the magistrate judge's report, the court **ADOPTS** the report and **ACCEPTS** the recommendation. (Doc. 21). Consistent with that recommendation, the court **WILL GRANT** Ms. Pestano's motion to dismiss (doc. 19), and the court **WILL DENY** Warden Neeley's motion to dismiss (doc. 17) **AS**

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<sup>1</sup> On October 19, 2023, the United States Postal Service returned the copy of the court's September 22, 2023 order mailed to Ms. Pestano at the address she provided as undeliverable with the following notations: "Return to sender," "Detainee Not Found," "Insufficient Address," and "Unable to forward." (Doc. 22 at 9). The report and recommendation mailed to Ms. Pestano at her address of record has not been returned. (Doc. 21).

**MOOT.**<sup>2</sup> The court will enter a final order consistent with this memorandum opinion.

**DONE** and **ORDERED** this November 21, 2023.



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**ANNEMARIE CARNEY AXON**  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> The Clerk of Court notified Ms. Pestano when she filed her petition that she must keep the court advised of her current mailing address and that her failure to keep a current address on record with the Clerk's Office might result in the dismissal of her case. (Doc. 2). Accordingly, even if the court has misconstrued Ms. Pestano's August 28, 2023 letter, her petition is due to be dismissed for failure to prosecute. (Doc. 19). Moreover, Ms. Pestano originally sought additional credits toward an earlier release date, but it appears she has now been released. Because the court can no longer grant Ms. Pestano the relief she seeks, her petition is due to be dismissed as moot.